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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff,

and

MJ RESEARCH, INC.,

Plaintiff - Appellant,

v.

APPLERA CORPORATION, f/k/a PE
Corporation; et al.,

Defendants - Appellees.

No. 03-57229

D.C. No. CV-03-05429-MRP

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Mariana R. Pfaelzer, District Judge, Presiding

Argued and Submitted October 17, 2005
Pasadena, California

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

MJ Research appeals the district court's judgment dismissing for lack of jurisdiction its *qui tam* action against defendants. In determining under Fed. R. Civ. P. 12(b)(1) that it lacked jurisdiction, the district court found that MJ Research was not an original source under 31 U.S.C. § 3730(e)(4)(B) of the False Claims Act. We review for clear error factual findings relevant to a determination of subject matter jurisdiction. *See United States ex rel. Biddle v. Board of Trustees of the Leland Stanford, Jr. Univ.*, 161 F.3d 533, 535 (9th Cir. 1998). We have jurisdiction over the district court's final judgment, under 28 U.S.C. § 1291, and we affirm.

The public disclosure bar of the False Claims Act applies whenever a complaint is based upon allegations or transactions of fraud disclosed in the news media. 31 U.S.C. § 3730(e)(4)(A). As long as the material elements of the fraud allegation are disclosed before the complaint is filed, the jurisdictional bar applies. *See A-1 Ambulance Serv., Inc. v. California*, 202 F.3d 1238, 1243 (9th Cir. 2000). Here, as even plaintiff conceded before the district court, the information on which it relied was publicly disclosed before it filed its *qui tam* action.

The False Claims Act provides an exception to the public disclosure jurisdictional bar for an "original source" of the fraud allegation. 31 U.S.C. § 3730(e)(4)(A). An "original source" is a relator who has "direct and independent

knowledge” of the information forming the basis for the complaint and who voluntarily provides that information to the Government. 31 U.S.C. § 3730 (e)(4)(B). Here, it is undisputed that MJ’s knowledge was independent of the public disclosure, and MJ’s voluntary disclosure to the federal government prior to filing its complaint is not in dispute.

This court has framed the inquiry for “direct” knowledge as: “the relator must show that he had firsthand knowledge of the alleged fraud, and that he obtained this knowledge through his ‘own labor unmediated by anything else.’” *United States v. Alcan Elec. & Eng’g, Inc.*, 197 F.3d 1014, 1020 (9th Cir. 1999) (quoting *United States ex rel. Aflatooni v. Kitsap Physicians Servs., Inc.*, 163 F.3d 516, 525 (9th Cir. 1998)). “A person who learns secondhand of the allegations of fraud does not have ‘direct knowledge’ within the meaning of [the FCA].” *United States ex rel. Devlin v. California*, 84 F.3d 358, 362 (9th Cir. 1996).

The district court did not clearly err in concluding that MJ did not possess direct knowledge of the alleged fraud. Despite MJ’s extensive investigative efforts, its knowledge was either obtained from publicly available patent materials, journal articles, and grant applications, or derived secondhand from Dr. Henry Huang’s research notes and grant files. As the district court determined, MJ’s knowledge was neither “unmediated” nor witnessed with its “own eyes.” *See Wang*

v. FMC Corp., 975 F.2d 1412, 1417 (9th Cir. 1992). MJ Research did not have direct knowledge of the alleged fraud at issue here and thus is not an “original source.”

AFFIRMED.